

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT KNOXVILLE**

CHARLES BARNETT,)
And wife, SHEILA BARNETT)
Plaintiffs,) Case No: _____
v.) U.S. District Judge _____
STATE FARM FIRE AND CASUALTY) U.S. Magistrate Judge _____
COMPANY,) JURY DEMAND
Defendant.)

NOTICE OF REMOVAL FROM KNOX COUNTY CHANCERY COURT

COMES NOW, State Farm Fire and Casualty Company, (hereinafter referred to as "State Farm"), by and through counsel, pursuant to 28 U.S.C. §§1332, 1441 and 1446, and files this Notice of Removal of this civil action from the Chancery Court of Knox County, Tennessee, to the United States District Court for the Eastern District of Tennessee, at Knoxville, and states as follows:

1. On November 17, 2011, plaintiffs Charles and Sheila Barnett, filed a Complaint against this defendant in the Chancery Court of Knox County, Tennessee under Docket No. 181721-1
2. On November 22, 2011, the Complaint was served upon Brenda C. Mead, the designated agent for service of process with the Tennessee Department of Commerce and Insurance. The Tennessee Department of Commerce and Insurance forwarded the Complaint to State Farm's Murfreesboro, Tennessee office on December 2, 2011. A true and correct copy of all pleadings, process and the complaint served on State Farm is attached hereto as Exhibit A.
3. No further action has occurred on this case currently pending in Knox County Chancery Court.

4. Pursuant to 28 U.S.C. §1332(a), this court has jurisdiction when the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs and is between citizens of different states.

5. The plaintiffs, Charles and Sheila Barnett, are and were, at all times relevant to this action, residents of Knox County, Tennessee. State Farm Fire and Casualty Company is incorporated in the State of Illinois with its principal place of business in Bloomington, Illinois, and is licensed to do business in the State of Tennessee.

6. The Complaint filed by Dr. and Ms. Barnett seeks damages related to a breach of contract via a homeowner's insurance policy with State Farm Fire and Casualty Company. The plaintiffs also allege that this defendant engaged in unfair and deceptive practices, violating the Tennessee Consumer Protection Act (TCPA) as contained in TENN. CODE ANN. §§ 47-18-101 through 130 (2001, as supplemented).

7. The plaintiffs seeks an unspecified amount in compensatory damages, however, Dr. and Ms. Barnett allege their home incurred roof damage to the extent that the entire cedar shingle roof must be replaced, with two estimates totaling Fifty Six Thousand Six Hundred and Twenty One Dollars and Seventy Eight cents (\$56,621.78) and Fifty One Thousand Seven Hundred Thirty Nine Dollars and Sixty Nine cents (\$51,739.69). Plaintiffs seek treble damages through the TCPA as noted above. Pursuant to TENN. CODE ANN. §47-18-109(a) (3) (2001, as supplemented), the TCPA allows for treble damages and, as plead in the complaint, treble damages, at a minimum, would allow \$155,219.07 in additional recovery.

8. Furthermore, the plaintiffs have asked for attorneys' fees. Pursuant to *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376-377 (6th Cir. 2007), the TCPA allows these fees as part of the statutory recovery and these attorneys fees are included in the calculation of the amount in controversy.

9. Adding up the damages sought on the face of the Complaint, plaintiffs seek, at a minimum, approximately \$206,958.76 in damages, not including the attorneys' fees. Thus, these amounts are in significant excess of the sum or value of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars, exclusive of interest and costs.

11. Complete diversity of citizenship exists between the plaintiffs, Dr. Charles Barnett and Sheila Barnett and Defendant State Farm Fire and Casualty Company, and the amount in controversy in this case, exceeds the threshold of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars. The jurisdictional threshold contained within 28 U.S.C.A. §1332 has been met.

12. This defendant has filed a copy of this notice with the Chancery Court for Knox County, Tennessee, and has also served a copy to Lewis S. Howard and Elizabeth D. Sherrod, the attorneys for the Barnetts.

WHEREFORE, PREMISES CONSIDERED, Defendant requests this action be removed from Chancery Court for Knox County, to the United States District Court for the Eastern District of Tennessee at Knoxville. Defendant further requests a jury of six to hear this matter.

Respectfully submitted,

MCLEMORE LAW PLLC

By: /s/Jay R. McLemore

JAY R. MCLEMORE (#26727)
2550 Meridian Boulevard
Suite 200
Franklin, Tennessee 37067
Attorney for State Farm Fire and Casualty Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Notice of Removal from Chancery Court has been served via United States mail, postage prepaid, to the following:

Lewis S. Howard (BPR 011540)
Elizabeth D. Sherrod (BPR 027188)
Howard and Howard, P.C.
4820 Old Kingston Pike
Knoxville, Tennessee 37919

Howard G. Hogan
Clerk and Master of
Chancery & Probate Court
City-County Bldg. Suite 125
400 W. Main Street
Knoxville, TN 37902

This the 19th day of December, 2011.

/s/Jay R. McLemore
JAY R. McLEMORE